

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STARR INDEMNITY & LIABILITY
COMPANY,

Plaintiff,

V.

POINT RUSTON LLC et al.,

Defendants.

Case No. C20-5539RSL

ORDER REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on (1) plaintiff's "Motion for Summary Judgment" (Dkt. # 43), and (2) defendants' "Motion for Partial Summary Judgment" (Dkt. # 48). The Court, having reviewed the memoranda, declarations, and exhibits submitted by the parties,¹ finds as follows:

II. BACKGROUND

The parties do not dispute the key facts. See Dkt. # 53 at 4 (defendants incorporating plaintiff’s “Factual Background” section in their opposition). Plaintiff Starr Indemnity & Liability Company (“Starr”) filed this action for declaratory relief against defendants,² seeking a

¹ The Court finds this matter suitable for disposition without oral argument.

² At the time the parties' motions were filed, another defendant was listed in this matter, JLW Point Ruston Investments, LLC. This entity has since been dismissed, Dkt. # 51, and the Court uses the term "defendants" to refer to all of the remaining defendants: Point Ruston, LLC; Michael Cohen; Julie McBride; Loren Cohen; Holland Cohen; MC Ruston LLC; M&J Real Estate Investment, LLC; McBride Cohen Management Group, LLC; Abernethy Road Group, LLC; McBride-Cohen Construction Payroll ORDER REGARDING CROSS-MOTIONS FOR SUMMARY JUDGMENT - 1

1 judicial declaration that Starr has no duty to defend or indemnify defendants with respect to
 2 claims asserted in the action titled Thomsen Ruston, LLC, et al. v. Point Ruston, LLC, et al.,
 3 Case No. 20-2-05437-8 (the “underlying action”), currently pending in the Superior Court for
 4 Pierce County, Washington. Dkt. # 1 ¶ 1.

5 **A. Starr’s Policies**

6 Starr issued the following insurance policies to MC Construction Consultants, Inc.:
 7 Policy No. 1000057881191 (which incepted on January 31, 2019 and expired on January 1,
 8 2020),³ Dkt. # 44 at 159; Policy No. 1000057881201 (which incepted on February 28, 2020 and
 9 expired on February 28, 2021) (collectively, “Starr’s Policies”). Id. at 211. The underlying
 10 action was filed on March 11, 2020. Id. at 46.

11 **B. The Underlying Action**

12 Thomsen Ruston, LLC (“TRL”) and Jess Thomsen, Inc. (“JTI”) (collectively “the
 13 underlying plaintiffs”) initiated the underlying action against several parties, including all of the
 14 defendants in the instant action. Dkts. # 44 at 8, # 57 at 5, # 1 at 1.⁴ The underlying action
 15 concerns the alleged mismanagement of entities involved in the “Point Ruston Project” (the
 16 “Project”), a 90 acre housing commercial development near Tacoma, Washington, in which the
 17 underlying plaintiffs invested. Dkts. # 44 at 10–14, # 57 at 7–11 (¶¶ 2.1–2.15).

18 This paragraph summarizes relevant allegations that were made in the Second Amended
 19 Complaint in the underlying action (the “underlying complaint”). JTI’s principals are family
 20 members of Jess Thomsen, the founder of JTI. Dkts. # 44 at 10–11, # 57 at 7–8 (¶ 2.1). Jess
 21

22 Services, LLC; Century Tacoma Building, LLC; Century Condominiums, LLC; Point Ruston Theatre,
 23 LLC; Point Ruston Phase II, LLC; Point Ruston Phase III, LLC; and PR Retail, LLC.

24 ³ Defendants’ motion for partial summary judgment states that the first policy expired on
 25 February 28, 2020. Dkt. # 48 at 4. Starr’s complaint states the same, Dkt. # 1 at 5–6, ¶ 35, as does its
 26 correspondence regarding acknowledgment of the underlying action, Dkt. # 44 at 151.

27 ⁴ Starr informed the Court with its reply that it mistakenly filed the proposed version of the
 28 underlying complaint with its motion, rather than the final version. Dkt. # 56 at 3 n.2. The Court cites
 both the proposed version (Dkt. # 44 at 8–40) and the final version (Dkt. # 57 at 5–37) in this Order, and
 they are substantively identical.

1 Thomsen's son, Ken Thomsen, is JTI's President. Id. The Thomsen family invested in the
 2 Project through TRL, and the family loaned money for the Project through TRL and JTI. Dkts.
 3 # 44 at 11, # 57 at 8 (¶ 2.6). Defendant Michael Cohen served as the Project's primary developer
 4 and the manager of Point Ruston, LLC. Dkts. # 44 at 11–12, # 57 at 8–9 (¶¶ 2.2–2.4, 2.8). Point
 5 Ruston, LLC has two members: defendant MC Ruston, LLC and underlying plaintiff TRL.⁵
 6 Dkts. # 44 at 15, # 57 at 11–12 (¶¶ 4.4–4.5). Michael Cohen, and his son, Loren Cohen,
 7 mismanaged Point Ruston, LLC and its affiliates, resulting in those affiliates becoming "deeply
 8 in debt." Dkts. # 44 at 11–13, # 57 at 8–10 (¶¶ 2.7–2.13).

9 The underlying complaint asserts causes of action for: (1) judgment on TRL's loans
 10 against Point Ruston, LLC; (2) foreclosure on deeds of trust associated with the loans; (3) an
 11 accounting of entities affiliated with the Project; (4) fraudulent transfer and/or successor liability
 12 against Loren Cohen, as trustee of the LMC Family Trust; (5) breach of fiduciary duty against
 13 Michael and Loren Cohen as managers of Point Ruston, LLC (and other defendant entities); (6)
 14 breach of the covenant of good faith and fair dealing against Michael Cohen, Loren Cohen, MC
 15 Ruston, LLC, and Century Tacoma Building, LLC; and (7) judicial dissolution of Point Ruston,
 16 LLC "and some of its affiliates." Dkts. # 44 at 33–38, # 57 at 30–35 (¶¶ 5.1–5.38). All causes of
 17 action asserted in the underlying complaint were brought directly by TRL. Dkts. # 44 at 33–38,
 18 # 57 at 30–35 (¶¶ 5.1, 5.3, 5.8, 5.15, 5.22, 5.29, 5.35). Five of the seven causes of action are
 19 additionally asserted by JTI. Id. (third through seventh causes of action). Four of the causes of
 20 action are asserted directly and derivatively by TRL and JTI.⁶ Dkts. # 44 at 34–38, # 57 at 31–

21
 22 ⁵ Starr's motion refers to non-party Cascadia Law Group as a "member," Dkt. # 43 at 4, but the
 23 underlying complaint refers to this entity as merely retaining an economic interest, Dkts. # 44 at 16, # 57
 24 at 13 (¶ 4.10). Defendants' original corporate disclosure statement identified Cascadia Law Group as an
 25 "owner, partner, or member" of Point Ruston, LLC. Dkt. # 30 at 2, ¶ B.1. Defendants amended their
 26 corporate disclosure statement to replace Cascadia Law Group PLLC with Environmental Assets – Point
 27 Ruston LLC. Dkt. # 32 at 2, ¶ B.1; Dkt. # 41 at 7.

28 ⁶ For the third, fifth, and sixth causes of action, TRL purports to act derivatively on behalf of
 Point Ruston, LLC, Century Condominiums, LLC, and Point Ruston Theatre, LLC, Dkts. # 44 at 34–38,
 # 57 at 31–35, whereas JTI purports to act derivatively on behalf of Point Ruston Phase II, LLC. Id. For
 the seventh cause of action, the underlying complaint does not specify the entities associated with the
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1 35 (third, fifth, sixth, and seventh causes of action). The underlying plaintiffs requested various
 2 relief, including money damages, a judicial declaration interpreting the subject deeds of trust,
 3 the appointment of a receiver for Point Ruston, LLC and its affiliates, and their dissolution.
 4 Dkts. # 44 at 38–40, # 57 at 35–37 (¶¶ 6.1–6.3).

5 **C. Starr's Reservation of Rights and Declaratory Judgment Action**

6 On April 1, 2020, defendants notified Starr of the underlying action, and on April 20,
 7 2020, Starr agreed to defend defendants subject to a reservation of rights. See id. at 149 (Starr
 8 acknowledging an April 1, 2020 email enclosing a copy of the underlying complaint). Starr
 9 nevertheless asserted that the “Insured vs. Insured” exclusion barred any defense obligation. See
 10 id. at 153 (citing Exclusion 3(i) of Starr’s Policies). On June 9, 2020, Starr filed its complaint in
 11 the above-captioned matter, seeking to withdraw its defense and recover all defense costs it paid
 12 in connection with the underlying action. Dkt. # 1.

13 **III. DISCUSSION**

14 **A. Legal Standard for Summary Judgment**

15 Summary judgment is appropriate when, viewing the evidence in the light most favorable
 16 to the nonmoving party, “there is no genuine dispute as to any material fact and the movant is
 17 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); Fresno Motors, LLC v. Mercedes
 18 Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014). The moving party “bears the initial
 19 responsibility of informing the district court of the basis for its motion.” Celotex Corp. v.
 20 Catrett, 477 U.S. 317, 323 (1986). Where the nonmoving party will bear the burden of proof at
 21 trial, the moving party need not “produce evidence showing the absence of a genuine issue of
 22 material fact,” but instead may discharge its burden under Rule 56 by “pointing out . . . that
 23 there is an absence of evidence to support the nonmoving party’s case.” Id. at 325.

24 Once the moving party has satisfied its burden, it is entitled to summary judgment if the
 25 non-moving party fails to designate “specific facts showing that there is a genuine issue for

26
 27 derivative part of the claim, other than to refer to “Point Ruston and certain of its affiliates.” Dkts. # 44
 28 at 38, # 57 at 35.

1 trial.” Id. at 324. “The mere existence of a scintilla of evidence in support of the non-moving
 2 party’s position is not sufficient.” Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912,
 3 919 (9th Cir. 2001) (internal citation omitted). “An issue is ‘genuine’ only if there is a sufficient
 4 evidentiary basis on which a reasonable fact finder could find for the nonmoving party.” In re
 5 Barboza, 545 F.3d 702, 707 (9th Cir. 2008) (internal citation omitted). On cross-motions for
 6 summary judgment, the Court evaluates the motions separately, “giving the nonmoving party in
 7 each instance the benefit of all reasonable inferences.” ACLU v. City of Las Vegas, 333 F.3d
 8 1092, 1097 (9th Cir. 2003) (internal citation omitted).

9 **B. Determining Insurance Coverage**

10 “Determining whether coverage exists is a 2-step process. The insured must show the loss
 11 falls within the scope of the policy’s insured losses. To avoid coverage, the insurer must then
 12 show the loss is excluded by specific policy language.” McDonald v. State Farm Fire & Cas.
 13 Co., 119 Wn.2d 724, 731 (1992); see also Probuilders Specialty Ins. Co. v. Coaker, 145 F. Supp.
 14 3d 1058, 1063 (W.D. Wash. 2015) (“The determination of whether coverage exists involves a
 15 burden-shifting framework. See [McDonald, 119 Wn.2d at 731]. The insured bears the initial
 16 burden to demonstrate that the loss falls within the scope of the policy’s insured losses. If the
 17 insured makes that demonstration, the insurer can avoid coverage by showing that specific
 18 policy language excludes the loss.”).

19 **C. Interpreting Insurance Policies Under Washington Law**

20 The Court’s “[i]nterpretation of insurance policies is a question of law, in which the
 21 policy is construed as a whole and each clause is given force and effect.” Overton v. Consol. Ins.
 22 Co., 145 Wn.2d 417, 424 (2002).

23 In Washington, insurance policies are construed as contracts. An
 24 insurance policy is construed as a whole, with the policy being given
 25 a fair, reasonable, and sensible construction as would be given to the
 26 contract by the average person purchasing insurance. If the language
 27 is clear and unambiguous, the court must enforce it as written and
 28 may not modify or create an ambiguity where none exists. If the
 clause is ambiguous, however, extrinsic evidence of intent of the

1 parties may be relied upon to resolve the ambiguity. Any ambiguities
 2 remaining after examining applicable extrinsic evidence are resolved
 3 against the drafter-insurer in favor of the insured. A clause is
 4 ambiguous when, on its face, it is fairly susceptible to two different
 5 interpretations, both of which are reasonable.

6 Panorama Village Condo. Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co., 144 Wn.2d 130, 137
 7 (2001) (internal citation and quotation marks omitted); see also Kut Suen Lui v. Essex Ins. Co.,
 8 185 Wn.2d 703, 710–11 (2016) (enforcing the plain language of an insurance policy).

9 **D. The Scope of Starr's Policies**

10 Defendants argue that summary judgment should be granted in their favor because Starr
 11 does not dispute defendants' evidence showing that the loss falls within the scope of Starr's
 12 Policies, and Starr has failed to satisfy its summary judgment burden to show that coverage is
 13 excluded.

14 Starr's Policies provide the following coverage:

- 15 A. The **Insurer** shall pay on behalf of any **Insured Person** the **Loss** arising
 from a **Claim** first made during the **Policy Period** (or Discovery Period, if
 applicable) against such **Insured Person** for any **Wrongful Act**, and
 reported to the **Insurer** in accordance with the terms of this policy, except
 if the **Company** has indemnified the **Insured Person** for such **Loss**.
- 16 B. The **Insurer** shall pay on behalf of any **Company** the **Loss** arising from a
 Claim first made during the **Policy Period** (or Discovery Period, if
 applicable) against such **Insured Person** for any **Wrongful Act**, and
 reported to the **Insurer** in accordance with the terms of this policy, if the
 Company has indemnified the **Insured Person** for such **Loss**.
- 17 C. The **Insurer** shall pay on behalf of the **Company** the **Loss** arising from a
 Claim first made during the **Policy Period** (or Discovery Period, if
 applicable) against the **Company** for any **Wrongful Act**, and reported to
 the **Insurer** in accordance with the terms of this policy.

24 Dkt. # 44 at 227. Defendants successfully establish that the loss falls within the scope of Starr's
 25 Policies by demonstrating the existence of: "(1) a Claim . . . first made during the Policy Period;

1 [(2)](3) against a Company / Insured Person; (4) for any Wrongful Act; (5) reported to the
2 Insurer in accordance with the terms of the Starr Policies.” Dkt. # 48 at 9.⁷

3 **1. The underlying action is a “Claim” first made during the “Policy Period.”**

4 Starr’s Policies define “Claim” to include any “judicial, administrative or regulatory
5 proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief
6 commenced against an **Insured**, including any appeal therefrom, which is commenced by []
7 service of a complaint or similar proceeding” Dkt. # 44 at 227. The underlying action is a
8 “Claim” because it is a judicial proceeding for monetary and non-monetary relief.

9 As for the “Policy Period,” Starr’s Policies define this as “the period from the inception
10 date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of
11 the Declarations or the effective date of cancellation of this policy.” *Id.* at 217. The underlying
12 action was filed on March 11, 2020, *id.* at 46, after Policy No. 1000057881201 was incepted,
13 and before it expired, *id.* at 211. Therefore, the underlying action is a “Claim” first made during
14 the “Policy Period.”

15 **2. The “Claim” is against a “Company.”**

16 Starr’s Policies contain an endorsement amending the definition of “Company” to include
17 the following:

18 • Century Condominiums, LLC;
19 • Century Tacoma Building LLC;
20 • M&J Real Estate Investment, LLC;
21 • MC Ruston, LLC;
22 • Point Ruston, LLC;
23 • Point Ruston Phase II – Building 18, LLC;
24 • Point Ruston Phase III, LLC;
25 • Point Ruston Theatre, LLC;
26 • PR Retail, LLC;
27 • Abernethy Road Group, LLC;
28 • McBride-Cohen Management Group, LLC; and
• McBride-Cohen Construction Payroll Services, LLC.

⁷ Starr’s Policies reflect that Starr is the “Insurer.” Dkt. # 44 at 216.

1 Dkt. # 44 at 248, 250. Because the foregoing are all defendants in the underlying action, the
2 “Claim” is against a “Company” under Starr’s Policies.

3 **3. The “Claim” is against “Insured Persons.”**

4 Starr’s Policies define “Insured Person” as “any: (1) **Executive**; (2) **Employee**; or (3)
5 **Outside Entity Insured Person.**” Dkt. # 44 at 229. Additionally, Starr’s Policies define
6 “Executive” in the following way:

7 any: (1) past, present or future duly elected or appointed director, officer, trustee,
8 governor, management committee **Member** or **Member** of the board of managers;
9 (2) past, present or future person in a duly elected or appointed position in an
10 entity which is organized and operated in a foreign jurisdiction that is equivalent
11 to an executive position listed in item (1) above; or (3) past, present or future
12 general counsel and risk manager (or equivalent position) of the **Company**.

13 Id. at 228. Michael Cohen and Loren Cohen were both named as defendants in the underlying
14 action. Michael Cohen is the appointed manager and governor of Point Ruston, LLC, Point
15 Ruston Phase II, LLC, and MC Ruston, LLC, and Loren Cohen is the appointed manager and
16 governor of Century Condominiums, LLC, Point Ruston Phase II, LLC, Point Ruston Theatre,
17 LLC, M&J Real Estate Investments, LLC, and McBride-Cohen Management Group, LLC. Dkt.
18 # 49 at 2, ¶¶ 2–3. Thus, Michael and Loren Cohen are both “Executives,” which means they are
19 “Insured Persons.” Therefore, the “Claim” is against “Insured Persons” under Starr’s Policies.

20 **4. The “Claim” is for a “Wrongful Act.”**

21 With respect to an “Insured Person,” Starr’s Policies define a “Wrongful Act” as “any
22 actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, or
23 misleading statement by an **Insured Person** in his or her capacity as such or any matter claimed
24 against an **Insured Person** by reason of such capacity.” Dkt. # 44 at 230–31. The claims in the
25 underlying action are for a “Wrongful Act” because they allege that “Insured Persons” Michael
26 Cohen and Loren Cohen breached their duty of good faith and fair dealing and breached their
27 fiduciary obligations, among other things. Id. at 36–38, ¶¶ 5.22–5.34.

1 **5. The “Claim” was reported to Starr in accordance with the terms of Starr’s**
 2 **Policies.**

3 Starr’s Policies require the following with regard to reporting a “Claim”:

4 With respect to the Directors & Officers Liability Coverage Section, the
 5 **Insured(s)** shall, as a condition precedent to the obligations of the **Insurer** under
 6 this policy, give written notice to the **Insurer** pursuant to Clause 5, of a **Claim**
 7 made against an **Insured** as soon as practicable after the **Company**’s general
 8 counsel or risk manager (or individuals with equivalent responsibilities) becomes
 9 aware of the **Claim**; however, in no event shall such notice be provided later than
 sixty (60) days after the expiration of the **Policy Period** (or Discovery Period, if
 applicable).

10 Dkt. # 44 at 219. The underlying action was filed on March 11, 2020, id. at 46, and Starr was
 11 provided notice of it on April 1, 2020, id. at 149. Accordingly, the underlying action was
 12 reported to Starr in accordance with the terms of Starr’s Policies.

13 **6. Starr does not dispute the above.**

14 In responding to defendants’ motion for partial summary judgment, Starr purported to
 15 reserve “its right to assert other defenses to coverage,” Dkt. # 52 at 2 n.1, but the only defense it
 16 asserted pertained to the “Insured vs. Insured” exclusion. Starr’s position is that “[t]he only facts
 17 material to the determination [of coverage] are the contents of the underlying pleadings and the
 18 policies, which are indisputable.” Dkt. # 43 at 10; see Dkt. # 52 at 3 (“[T]here is no uncertainty
 19 or dispute regarding the predicate facts.”). In other words, when offered the opportunity to
 20 dispute the facts defendants presented, Starr did not do so.

21 **E. The “Insured vs. Insured” Exclusion**

22 Because defendants successfully bore their burden to demonstrate that the loss falls
 23 within the scope of Starr’s Policies’ insured losses, and because Starr seeks to avoid coverage,
 24 the burden shifts to Starr to show that “the loss is excluded by specific policy language.”

25 McDonald, 119 Wn.2d at 731. “Exclusions from coverage are strictly construed against the
 26 insurer because they are contrary to the protective purpose of insurance.” Berkshire Hathaway
 27 Homestate Ins. Co. v. SQI, Inc., 132 F. Supp. 3d 1275, 1286 (W.D. Wash. 2015) (citing Stuart
 28 v. Am. States Ins. Co., 134 Wn.2d 814, 818–19 (1998)). Starr claims that it has no duty to

1 defend or indemnify defendants because of the “Insured vs. Insured” exclusion,⁸ which bars
 2 coverage for:

3 any **Loss** in connection with any **Claim** *brought by or on behalf of any*
 4 **Insured**[;] provided, however, that this exclusion shall not apply to . . . a
 5 shareholder derivative action, but only if such action is brought and maintained
 6 without the solicitation, approval, assistance, active participation or intervention of
 7 any **Insured**.

8 Dkt. # 44 at 231–32 (emphasis added). Starr has two arguments as to why the “Insured vs.
 9 Insured” exclusion should apply here: (1) Starr asserts that underlying plaintiff TRL is an
 10 “Insured”; and (2) Starr asserts that the underlying plaintiffs’ claim is brought “on behalf of” an
 11 “Insured” because Ken Thomsen is President of JTI, a “principal” of TRL and JTI, and he is an
 12 “Insured,”⁹ Dkt. # 43 at 12–13. Neither argument is persuasive.

13 1. **TRL is not an “Insured.”**

14 Starr’s first argument is premised on an unreasonable interpretation of Starr’s Policies.
 15 Starr believes that a “Member” of any “Company” qualifies as an “Insured.” Dkt. # 43 at 12. Per
 16 Starr’s Policies, “Member” means “owner of a limited liability company represented by its
 17 membership interest, who may serve as a **Manager**.¹⁰ Dkt. # 44 at 217. However, the definition
 18 of “Insured” does not include any “Member.” “**Insured**’ means the **Company** and any **Insured**
 19 **Person**.” Dkt. # 44 at 228. The definition of “Insured Person” includes any “Executive,” and an
 20 “Executive” means any . . . past, present, or future duly elected or appointed director, officer,
 21 trustee, governor, *management committee Member or Member of the board of managers.*” *Id.* at
 22 228–29 (emphasis added). Starr contends that applying the phrases “management committee”
 23 and “board of managers” conflicts with the definition of “Member.” Dkt. # 56 at 6. It does not.

24 8 This exclusion is found at Section 3(i) of the “Directors & Officers Liability Coverage
 25 Section.” Dkt. # 44 at 232.

26 9 Starr takes the position that the “Insured vs. Insured” exclusion applies to the entire proceeding
 27 or none of it. Dkt. # 56 at 3 (asserting that “either the proceeding was ‘brought by or on behalf of any
 28 Insured,’ or it was not”). Starr does not argue that distinct causes of action should be excluded.

10 ““Manager’ means a person serving in a directorial capacity for a limited liability company.”
 Dkt. # 44 at 217.

1 The definition of “Executive” merely specifies what types of “Members” qualify as
 2 “Executives.”

3 Starr also argues that applying these phrases renders the definitions of “Member” and
 4 “Manager” meaningless and superfluous. On the contrary, these definitions clarify that not all
 5 “Members” are “Managers.” Admittedly, the capitalized and bolded term “Manager” does not
 6 appear elsewhere in Starr’s Policies other than the definition of “Member,” but this is not
 7 anomalous enough to justify Starr’s preferred interpretation, which would unreasonably ignore
 8 the phrases “management committee” and “of the board of managers.” See Nat’l Union Fire Ins.
 9 Co. of Pittsburgh, PA v. Expedia, Inc., No. C19-0896RSL, 2020 WL 5893326, at *3–4 (W.D.
 10 Wash. Oct. 5, 2020) (rejecting insurance company’s interpretation of policy exclusion which
 11 ignored the phrase “of an Insured’s products or services”); Pacific West Securities, Inc. v.
 12 Illinois Union Ins. Co., No. C12–539RSM, 2012 WL 3763551, at *6 (W.D. Wash. Aug. 29,
 13 2012) (finding that it would be an unreasonable interpretation to “essentially strike [an
 14 arbitration clause] from a contract”); Ohio Cas. Ins. Co. v. Chugach Support Servs., Inc., No.
 15 C10–5244RBL, 2011 WL 4712234, at *4 (W.D. Wash. Oct. 6, 2011) (insurance policy
 16 interpretations that ignore clear policy language are unreasonable). There is no ambiguity in the
 17 policy language.¹¹

18 While TRL is a “Member” of various “Companies” (Century Condominiums, LLC, Point
 19 Ruston, LLC, and Point Ruston Theatre, LLC), Dkt. # 45 at 14, 28, 37, TRL is not a
 20 “management committee Member” or a “Member of the board of managers” because the
 21 Companies are manager-managed LLCs with Loren Cohen or Michael Cohen as the “sole
 22

23 ¹¹ Assuming, *arguendo*, that there was ambiguity, the Court would be bound to resolve it in favor
 24 of the insured defendants, particularly here, where the language is an exclusion from coverage. See
Shotwell v. Transamerica Title Ins. Co., 91 Wn.2d 161, 167–68 (1978) (“Where a provision of a policy
 25 of insurance is capable of two meanings, or is fairly susceptible of two constructions, the meaning and
 26 construction most favorable to the insured must be employed, even though the insurer may have
 27 intended otherwise This rule applies with added force in the case of exceptions and limitations to a
 28 policy’s coverage.”); Dickson v. U.S. Fid. & Guar. Co., 77 Wn.2d 785, 789 (1970) (“Exclusionary
 clauses in an insurance policy are to be construed most strongly against the company writing the policy,
 and in favor of the insured.”).

1 Manager,” Dkt. # 54 at 1–2, ¶¶ 2–4. Therefore, TRL is not an “Executive.” Accordingly, TRL is
 2 not an “Insured Person” under Starr’s Policies, nor does TRL otherwise qualify as an
 3 “Insured.”¹²

4 **2. JTI is not an “Insured,” and neither TRL nor JTI brought the underlying**
 5 **action “on behalf of” an “Insured.”**

6 Starr concedes that JTI is not an “Insured,” see Dkt. # 43 at 15 (asserting that “only one

7 of the two underlying plaintiffs ([TRL]) is an “Insured”), but Starr contends that because JTI’s

8 President, Ken Thomsen, is an “Insured,” and a “principal” of TRL and JTI,¹³ that therefore, the

9 claim is brought “on behalf” of an “Insured,” Dkts. # 43 at 13, # 56 at 7. Ken Thomsen serves as

10 the Vice President of non-party Torden Thomsen, Inc., and defendants concede that Ken

11 Thomsen is an “Insured” because a “Vice President” is an “Executive,” and Torden Thomsen,

12 Inc. is a “Company” under Starr’s Policies.¹⁴ Dkts. # 53 at 9, # 58 at 5 n.3. Starr claims that the

13 underlying action should be construed as being brought “on behalf of” an “Insured” because

14 “[TRL] and JTI are going concerns expressly [sic] acting on behalf of their ‘principals,’ Ken

15 Thomsen and his family.” Dkt. # 56 at 8. None of the cases Starr cites, however, stand for the

16 proposition that LLCs like TRL, or corporations like JTI, necessarily act “on behalf of” their

17 principals or officers.¹⁵

18

19 ¹² Starr does not argue that TRL would qualify as an insured “Company” under Starr’s Policies,
 20 see Dkt. # 43 at 12–13, and Starr’s Policies do not list TRL as a “Company,” see Dkt. # 44 at 248, 250
 (amending the definition of “Company” to include a list of specific entities).

21 ¹³ While the underlying complaint refers to Ken Thomsen as one of the “principals of JTI,” it
 22 does not directly state that he is a principal of TRL. Dkts. # 44 at 8–40, # 57 at 5–37.

23 ¹⁴ Starr offers another basis for Ken Thomsen’s status as an “Insured,” which is that because he
 24 is a “Member” of KT&MC Developing, LLC, which is a “Company” under Starr’s Policies, Dkts. # 44
 25 at 248, # 45 at 20, that therefore Ken Thomsen is an “Executive,” “Insured Person,” and an “Insured,”
 26 Dkt. # 43 at 13. The Court has rejected this interpretation of the policy language. See supra Part III.E.1.

27 ¹⁵ For example, Starr cites Progressive Cas. Ins. Co. v. F.D.I.C., 80 F. Supp. 3d 923, 948 (N.D.
 28 Iowa 2015), for its conclusion that the underlying plaintiffs’ claim was brought on behalf of Ken
 Thomsen, Dkt. # 43 at 13, but this case merely held that “by or on behalf of” as used in the “Insured vs.
 Insured” exclusion means “on the part of[,] in the name of, as the agent or representative of, on account
 of, for, [or] instead of.” It did not hold that LLCs or corporations act “on behalf” of their principals or
 officers. Notably, Progressive determined that the intent of the “Insured vs. Insured” exclusion “was to
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1 The Merriam-Webster Dictionary currently defines the phrase “on behalf of someone” to
 2 mean “as a representative of someone” or “for the benefit of someone” or “because of
 3 someone.” On Behalf of Someone, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/on%20behalf%20of%20someone> (last visited Aug. 13, 2021); see also
 4 Madden v. Cowen & Co., 576 F.3d 957, 973 (9th Cir. 2009) (finding the common sense
 5 meaning of “on behalf of,” according to Webster’s Third New International Dictionary, was “in
 6 the interest of,” “as a representative of,” or “for the benefit of”). And Starr offers no evidence
 7 that TRL or JTI was acting on behalf of Ken Thomsen rather than on behalf of their own
 8 business interests.¹⁶ Defendants correctly observe that the underlying complaint does not allege
 9

10 preclude collusive suits by and among the Company and Insured Persons . . . to recover for
 11 mismanagement.” Progressive Cas. Ins. Co., 80 F. Supp. 3d at 950. Progressive cited the Ninth Circuit’s
 12 decision in Biltmore Associates, L.L.C. v. Twin City Fire Insurance Company, 572 F.3d 663, 668 (9th
 13 Cir. 2009), as an example of another case where a court determined that “Insured vs. Insured”
 14 exclusions were intended to preclude collusive suits and intracompany claims. Progressive Cas. Ins. Co.,
 15 80 F. Supp. 3d at 950. Starr contends that the instant matter is the sort of intracompany claim that their
 16 policies were intended to exclude, Dkt. # 56 at 4–5, but the Court does not agree. The underlying
 17 plaintiffs, TRL and JTI, are not “Insureds” under Starr’s Policies, and this case is thus distinct from a
 18 situation where an insured company is seeking to force its insurer to pay for the poor business decisions
 19 of its officers or managers. While Ken Thomsen serves as an officer of JTI and is an “Insured,” his
 20 “Insured” status is due to his role in *non-party* Torden Thomsen, Inc. Given that the underlying action
 21 does not include Torden Thomsen, Inc., that company is also not seeking to force its insurer to pay for
 22 the poor business decisions of its officers and managers.

23 ¹⁶ Starr points out that Ken Thomsen signed the verification on the underlying complaint, Dkt.
 24 # 57 at 38, but Ken Thomsen’s service as an “authorized representative” of TRL means that he is acting
 25 on TRL’s behalf, not that TRL is acting on *his* behalf, see MJC Supply, LLC v. Scottsdale Ins. Co., No.
 26 CV 18-01265 RSWL-SK, 2019 WL 2372279, at *7–8 (C.D. Cal. June 4, 2019) (describing it as an
 27 “inferential leap” to conclude that a complaint was filed at the direction of an insured based only on the
 28 fact that the insured was the chairwoman and CEO of the plaintiff).

23 As an aside, the effectiveness of Ken Thomsen’s verification is somewhat questionable. One of
 24 the sentences in the verification statement is grammatically incomplete, as it states, “Based on
 25 knowledge of the facts and circumstances of these matters, I declare that the factual statements made in
 26 the Verified Second Amended Complaint [sic].” Dkt. # 57 at 38. Typically, one would expect the
 27 signatory to declare that the statements in question were true, see RCL Nw., Inc. v. Colorado Res., Inc.,
 28 72 Wn. App. 265, 271 (1993) (citing 7C C. Wright, A. Miller & M. Kane, Federal Practice and
 Procedure § 1827, at 50 n. 2 (1986) (“Verification is the confirmation of the correctness, truth or
 authenticity of the pleadings.”), but the sentence ends without specifying what exactly the signatory was
 declaring about the statements made in the underlying complaint.

1 that it was filed on Ken Thomsen's behalf. Dkt. # 53 at 9; see generally Dkts. # 44 at 8–40, # 57
2 at 5–37. Moreover, a basic principle of corporate law is that corporations are distinct legal
3 entities from their shareholders and officers. See Grayson v. Nordic Constr. Co., 92 Wn.2d 548,
4 552 (1979) (“A corporation exists as an organization distinct from the personality of its
5 shareholders.”); State v. Chase, 1 Wn. App. 2d 799, (2017) (“[C]orporations and corporate
6 officers acting in their personal capacities maintain distinct legal obligations and interests.”).
7 This principle applies to LLCs as well in that LLC members are treated as separate from the
8 LLC entity. See Bravern Residential II, LLC v. State Dep’t. of Revenue, 183 Wn. App. 769, 779
9 (2014) (relying upon the “well established legal principle that a business entity is a distinct,
10 separate ‘person’ from its owners”). The mere fact that an officer or “principal” of a corporation
11 or an LLC has the potential to benefit from the business entity’s action does not mean that the
12 entity undertook the action “on behalf of” an individual with this type of generalized interest.
13 The Court finds that Starr has not met its burden to show that the loss is excluded by the
14 “Insured vs. Insured” exclusion.¹⁷ Consequently, the Court finds that Starr has a duty to defend
15 and indemnify defendants in connection with the underlying action, and Starr is not entitled to
16 reimbursement of defense costs.

IV. CONCLUSION

For all the foregoing reasons, IT IS HEREBY ORDERED THAT,

(1) Starr's "Motion for Summary Judgment" (Dkt. # 43) is DENIED.

(2) Defendants' "Motion for Partial Summary Judgment" (Dkt. # 48) is GRANTED.

The Clerk of Court is directed to enter judgment for defendants and against plaintiff.

¹⁷ It is unnecessary for the Court to analyze the “derivative action” exception to the “Insured vs. Insured” exclusion where Starr has failed to demonstrate that this exclusion applies in the first place.

1 DATED this 17th day of August, 2021.
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Robert S. Lasnik
United States District Judge